In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-6609

EUGENIO AND ALICIA JIMENEZ, ET AL., APPELLANTS

v.

CASPAR W. WEINBERGER,
SECRETARY OF HEALTH, EDUCATION AND WELFARE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) and (d) of the Rules of this Court, the appellee moves that the judgment of the district court be affirmed.

1. Appellant Ramon Jimenez brought this action in the United States District Court for the Northern District of Illinois for review of a final decision by the Secretary of Health, Education and Welfare denying child's insurance benefits to two of his illegitimate children because they were born after his period of disability began, and therefore could not qualify for benefits under 42 U.S.C. 416(h)(3)(B). Benefits had been granted to a third illegitimate child, Magdalena, who was born before the period of disability began. A three-judge court rejected appellant's contention that the Social Security Act requirement that illegitimate children not otherwise qualifying for benefits must show depen-

dency on the wage earner at the time of his disability violated Due Process requirements (353 F. Supp. 1356).

The court held that Social Security Act provisions were valid if reasonably related to a legitimate purpose of the Act, rather than only if supportable under the "compelling state interest" test, as appellants contended. *Dandridge* v. *Williams,* 397 U.S. 471, 487; *Jefferson* v. *Hackney,* 406 U.S. 535; *Richardson* v. *Belcher,* 404 U.S. 78; *Flemming* v. *Nestor,* 363 U.S. 603. The district court distinguished recent decisions of this Court disapproving certain discriminations against all illegitimates, noting that the classification in 42 U.S.C. 416(h)(3)(B) does not apply to all illegitimate children, "but only to a well-defined category of them * * * suggesting that factors other than illegitimacy might account for the discrimination here." 353 F. Supp. at 1360. The court found that a disabled Social Security recipient could increase his benefits by up to 50 percent by acknowledging an illegitimate child, and stated (353 F. Supp. at 1361):

> [T]he requirement that §416(h)(3)(B) children be born before the onset of their parent's disability is based on the very simple, self-evident assumption that a person with nothing to gain from a spurious acknowledgment of paternity is not as likely to do so as one who could thereby increase his monthly income by one-half.

2. The case presents the same issue as *Weinberger* v. *Beaty,* in which we are simultaneously filing a Jurisdictional Statement challenging the decision of the Court of Appeals for the Fifth Circuit that the statutory provisions involved are invalid. As there developed, and as the district court here held, the challenged provisions of the Social Security Act bear a rational

relationship to the accomplishment of the aims of the Social Security system, and accordingly are constitutional. We therefore submit that the judgment of the district court upholding the statute should be affirmed. We suggest, however, that the Court should defer acting on this appeal until it has decided the *Beaty* case.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1973.